IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2838 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

MULUBHAI S GADHVI

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

MR YN OZA for Petitioner

Ms. Katha Gajjar with MR SP HASURKAR for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 23/11/1999

C.A.V. JUDGEMENT

This is a petition under Article 226 of the Constitution of India challenging the order of punishment of the respondent-State Government in a departmental inquiry held against the petitioner.

2. The petitioner was working in the cadre of Dy.Superintendent of Police and he retired on 31.1.1984. According to his case, he suffered departmental enquiry

in connection with an investigation. At the close of the enquiry the Inquiry Authority exonerated the petitioner from all the eight charges levelled against him. The petitioner, therefore, claims that since the Inquiry Authority has exonerated the petitioner from all the charges levelled against him, at the said departmental enquiry, the State Government has no authority or jurisdiction to impose any penalty and, therefore, the petitioner challenges the aforesaid order of penalty imposed upon him by the State Government. The order of penalty is placed at page 55. It shows that the State Government was pleased to deduct 5% of his pension for a period of 5 years and it further directs deduction of 5% of Gratuity amount. It further shows that the suspension period for the period between 13.6.1979 and 26.9.1979 should be treated as suspension period.

3. It has been mainly contended here that there was abnormal delay in conducting the enquiry and, therefore, the entire inquiry proceedings stood vitiated. The second point advanced on behalf of the petitioner before me is that since the Inquiry Authority exonerated the petitioner from all the charges levelled against him, the State Government had no authority to deduct any amount from his pension and/or gratuity and, therefore, the said order of penalty is illegal.

4. I have heard the learned Advocate arguing the matter on behalf of Mr Y N Oza, for the petitioner. I have also heard Ms. Katha Gajjar, learned AGP assisted by Addl.Solicitor, Mr S P Hasurkar.

5. So far as the delay is concerned, it has to be considered that there was some delay in finalisation of the enquiry proceedings against the petitioner. However, the respondent has filed an affidavit at page 61. It has been filed by Mr J R Modi, Under Secretary working in the Home Department. There it has been contended that one I.P.S. Officer, Mr J R Ahir was also involved in the said inquiry and, therefore, the State Government was required to follow all the relevant provisions and rules applicable to the said cadre. That preliminary inquiry was conducted and it was followed by regular departmental inquiry. Therefore, there was some delay in finalising the said inquiry. It has also been said in the said affidavit that the delinquents had asked for certain records and had also asked for the inspection and copies of certain records for giving reply to the charge-sheet filed against them. That all the requests made by the said delinquents were duly fulfilled, that the delinquents had also requested the concerned authorities

for grant of time for submitting their defence statement; that sufficient time was granted to them every time; that ultimately one of the delinquents H R Pawar, PSI had submitted his defence statement on 5.1.1980 while the petitioner had submitted his defence statement on 5.3.1980. The IPS Officer Mr Ahir submitted his reply on 1.7.1980 and Mr Vanjara who was also involved in the said inquiry, had not submitted his defence statement despite extension of time granted to him from time to time. So this story is leading to the delay in disposal of the said departmental inquiry against the petitioner.

6. It has also been stated in the said affidavit that the evidence was recorded at length and considering the bulk of evidence adduced at the inquiry, it naturally took some time in finalisation of the said inquiry proceedings. Therefore, there was no inaction or negligence on the part of the Government department.

7. The aforesaid affidavit filed on behalf of the State Government clearly shows that the delay did not take place on account of inaction or negligence on the part of the respondent-State. In that view of the matter, the decision in the case of William A Vyas v. The District Superintendent of Police, Vadodara Rural in Special Civil Application No.2166 of 1979 dated 27.8.1986 rendered by Hon'ble Mr Justice A M Ahmadi (as His Lordship then was) would not be of any help to the case of the petitioner. That was a case in which inquiry proceedings were quashed on account of delay and on certain other grounds. In the present case, the inquiry has been concluded. Therefore, when the inquiry has been concluded and the result is out, it would not be fair and proper to quash the said proceedings. It is also to be seen that the delay has been explained satisfactorily by way of affidavit. Under the circumstances, I am of the view that the petitioner is not entitled to argue that the inquiry proceedings stood vitiated on account of delay. Therefore, the first ground taken up by the petitioner during the course of argument stands without any merit.

8. I am of the view that the delay in all cases would not vitiate the proceedings. Firstly, there should be inaction or negligence on the part of the department which has not been established in the present case. The second requirement is that the defence of the delinquents should be shown to have been prejudiced. In the present case, the affidavit shows that defence of the petitioner has not been adversely affected on account of the said delay in finalisation of the inquiry. Under the

circumstances, I am of the view that this delay will not help the petitioner to any extent.

9. The second point argued out by the learned Advocate for the petitioner is that the Inquiry Authority had already exonerated the petitioner out-right and, therefore, the State Government could not impose any penalty on the petitioner.

10. Now it is a matter of record that after the conclusion of the inquiry, the petitioner was exonerated by the Inquiry Officer. But the State Government did not agree with the report of the Inquiry Authority and, therefore, show cause notice was issued to the petitioner and his reply was considered by the State Government. It did not satisfy the State Government and the State Government was of the view that the petitioner was guilty of the charges levelled against the petitioner and, therefore, the State Government recorded its finding to that effect and accordingly punished the petitioner as aforesaid.

11. So it is not the case of the petitioner that no further opportunity was given to the petitioner before imposing the above penalty.

12. If we refer to the provisions contained in the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, They provide for the procedure to be followed when the Inquiry Authority exonerates the delinquent and the disciplinary authority does not agree with the said report of the Inquiry Authority. Rule 10 of the said Rules will be relevant for the purpose. It says that the Disciplinary Authority, if it is not itself the Inquiry Authority, may, for reasons to be recorded by it in writing, remit the case to the Inquiry Authority for further inquiry. Now this is not the matter which has taken place in the present case.

13. Sub-rule (ii) says that the Disciplinary Authority shall, if it disagrees with the findings of the Inquiry Officer on any article of charge, record its reasons for such disagreement and record its own findings on such charges, if the evidence on record is sufficient for the purpose. This means that the Disciplinary Authority has every right, power and jurisdiction to disagree with the report of the Inquiry Authority.

14. This has exactly been done in the present case. So it is not obligatory on the part of the disciplinary authority to agree with the recommendation and report of

the Inquiry Authority, the Disciplinary Authority can certainly disagree with the said report and for that purpose it has to record reasons for such conclusions.

15. It is not the case of the petitioner that no such reason has been recorded. So it is clear that the State Government had every power, authority and jurisdiction under the aforesaid rules to disagree with the report of the Inquiry Authority which has exactly been done in the present case. Therefore, this action on the part of the respondent-State cannot be challenged on the ground that it was without any authority or jurisdiction.

16. So it is very clear that the respondent-State has acted in accordance with the said rules and, therefore, the punishment awarded by the respondent-State Government cannot be said to be illegal on the ground that the State Government acted without authority or jurisdiction.

17. No other ground has been agitated before me. It is not the case of the petitioner that the State Government acted without any evidence or that it was a case of no evidence. It is well settled that in departmental proceedings the facts are not required to be proved beyond reasonable doubt as is being done in a criminal prosecution. The department should have some evidence to act upon. It cannot act upon a case of no evidence. This is a thin line between the two. As stated above, the argument advanced on behalf of the petitioner is not that it is a case of no evidence and, therefore, the Court at this stage should not interfere with the said orders of the respondent-State.

18. Any way, the petitioner has not been able to satisfy this Court that the delay has resulted in miscarriage of justice. The petitioner has also not been able to show that the State Government had no authority or jurisdiction to impose penalty. I am of the view that the petitioner has not been able to show that the procedure enunciated in Rule 10 of the said Rule has been violated by the State Government.

20. The learned Advocate for the petitioner has relied upon the following decisions in support of his arguments:

i. In the case of J I Desai v. State of Gujarat, reported in 1993 (2) GLR 1225,

ii. In the case of Shri M N Mewada v. State of Gujarat & anr., reported in 1976 (2)

SLR 666,

iii. In the case of Mohanbhai D Parmar v. Y B Zala & anr., reported in (20) GLR 497,

iv. In the case of A P Augustine v. Supdt. of Post Offices, Alwaye, reported in 1984 (2) SLR 163,

v. In the case of Union of India & Ors. v. M B Patnaik & Ors., reported in AIR 1981 SC 858.

All these matters relate to the delay in finalisation of departmental enquiry. In the present case, this point has been discussed at length and as said above, the delay has been explained by the respondent-State by filing affidavit. Moreover, as said above, the delay has not caused prejudice to the defence of the petitioner. Therefore, the principles enunciated in the above decisions will not help the present case of the petitioner.

19. Under the circumstances, this petition is without any merits and deserves to be dismissed. Normally the dismissal would follow the cost of the petition. However, the petitioner is a retired Government Officer and, therefore, it would be in the fitness of things, to leave the parties to bear their own costs.

20. The petition is, therefore, ordered to be dismissed. The parties are left to bear their own costs.

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msp.